

## Chapter 1 Introduction

### Background

1.1 On 8 February 2012, according to the Administration, in response to media enquiries about the alleged involvement of conflict of interests of Mr LEUNG Chun-ying, a member of the Jury for the West Kowloon Reclamation Concept Plan Competition ("the Competition") held in 2001-2002 for the development of an integrated arts, cultural and entertainment district at the West Kowloon Reclamation ("WKR") in Hong Kong, the Government issued a press release on the Competition stating, among other things, the following :

*"...On February 25, 2002, Mr Leung declared that, to the best of his knowledge, none of his immediate family members or employees and no one who had an employment-type contract or close professional association or partnership with him had entered the competition, and that he was not a director or major shareholder of any company.*

*On the following two days (February 26 and 27), the Jury assessed the entries and selected the first prize winner, second prize winner and three honourable mentions by casting votes. Mr Leung took part in the adjudication process (including voting).*

*After the voting process had been completed, it came to the notice of the Competition Team that a project team member of an entrant on the preliminary list of winning entries appeared to be associated with Mr Leung.*

*On the following day (28 February) before the announcement of the competition results, the Competition Team informed Mr Leung of the above finding. Mr Leung reported the matter to the Jury that morning, and the Jury decided to disqualify the entry concerned in accordance with the conditions of the Competition. The results of the Competition were announced that afternoon..."*

1.2 When the Government press release was issued on 8 February 2012, Mr LEUNG Chun-ying had already announced his intention to stand in the Fourth Term Chief Executive Election ("the CE Election") to be held on 25 March 2012. There were calls in the community for the Administration to disclose fully all information relating to the Competition in order to consider if the conflict of interest allegations against Mr LEUNG Chun-ying could be substantiated. On 24 February 2012, the House Committee of the Legislative Council ("LegCo") convened a special meeting and invited the relevant Government officials to attend the meeting to discuss the matter. The House Committee requested the Administration to provide before the special meeting all information in its possession, custody or control relating to the allegations of conflict of interests in the Competition. On the day of the special meeting of the House Committee, the Administration provided some

documents to Members which included, among others, the registration form for the Competition and the list of project team members of the entry submitted by T R Hamzah & Yeang Sdn Bhd ("Hamzah & Yeang") (the "Entry Concerned"), the declaration form completed by Mr LEUNG Chun-ying and a note compiled by the Home Affairs Bureau in February 2012 on the voting record of Mr LEUNG Chun-ying in the adjudication of the entries for the Competition on 26 and 27 February 2002.

1.3 After discussion with the Administration and having examined the documents provided for the special House Committee meeting on 24 February 2012, Members considered that the information disclosed by the Administration could not dispel public concerns and queries about the conflict of interest allegations against Mr LEUNG Chun-ying. Members agreed that a motion should be moved by the Chairman of the House Committee at the Council meeting of 29 February 2012 to appoint a select committee, which is given the power to summon under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LCPPO"), to study Mr LEUNG Chun-ying's involvement as a member of the Jury in the Competition and related issues ("the Select Committee").

## **Appointment of the Select Committee and its terms of reference**

1.4 The Council passed a resolution at its meeting of 29 February 2012 to appoint the Select Committee to study Mr LEUNG Chun-ying's involvement as a member of the Jury in the Competition and related issues ("the Resolution"). The Resolution also authorised the Select Committee, in the performance of its duties, to exercise the powers conferred by section 9(1) of LCPPO to order the attendance of witnesses to give evidence and the production of papers, books, records or documents by witnesses. The Resolution sets out the terms of reference of the Select Committee as follows :

*"RESOLVED*

*that this Council appoints a select committee for the purpose of studying Mr LEUNG Chun-ying's involvement as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition, and related issues; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."*

## **Membership of the Select Committee**

1.5 At the House Committee meeting on 2 March 2012, Members discussed the membership size of the Select Committee and the procedures for nomination of Members for appointment by the President of LegCo to the Select Committee. Members decided by a majority of votes on the membership size of 12 for the Select Committee. In the light of the concern raised by some Members that the Select Committee might be perceived to have a conflict of interests if its members comprised those who had nominated a candidate in the CE Election, a motion was moved to limit the membership to members who had not made such nomination. The motion was not passed by the House Committee following discussion. Nevertheless, in the light of the same concern, Members decided by a majority of votes that the chairman and deputy chairman of the Select Committee should only be those members who had not made any nomination of candidates in the CE Election.

1.6 On the recommendation of the House Committee, the President of LegCo appointed on 2 March 2012 the Chairman, Deputy Chairman and members of the Select Committee in accordance with Rule 78(2) of the Rules of Procedure of LegCo ("RoP"). The 12 members of the Select Committee are as follows :

Hon IP Kwok-him, GBS, JP (Chairman)

Hon Andrew CHENG Kar-foo (Deputy Chairman)

Dr Hon Philip WONG Yu-hong, GBS

Hon Abraham SHEK Lai-him, SBS, JP

Hon LEE Wing-tat

Hon Cyd HO Sau-lan

Dr Hon LAM Tai-fai, BBS, JP

Hon Paul CHAN Mo-po, MH, JP

Dr Hon Priscilla LEUNG Mei-fun, JP

Hon Paul TSE Wai-chun, JP

Hon Tanya CHAN

Hon WONG Yuk-man

1.7 The Select Committee notes that the C Y Leung Campaign Office sent a letter dated 2 March 2012, via email, to the President of LegCo and copied it to the Chairman of the Select Committee to express various concerns about the Select Committee. The C Y Leung Campaign Office was concerned, among others, that the investigation process and the impartiality of the Select Committee's conclusions might be affected by the situation that seven members of the Select Committee had made nomination of candidates in the CE Election. In addition, given the composition of the Select Committee, if hearings were to be conducted before the CE Election on 25 March 2012, it would be unfair to Mr LEUNG Chun-ying and would undermine the Select Committee's credibility. The C Y Leung Campaign Office hoped that LegCo would consider re-constituting the Select Committee. On the instructions of the President of LegCo, the Secretary General of the LegCo Secretariat replied to the C Y Leung Campaign Office in writing on 5 March 2012. In the reply, the Secretary General of the LegCo Secretariat stated that on the recommendation of the House Committee, the President of LegCo decided on the membership size of 12, and appointed members, the

Chairman and Deputy Chairman of the Select Committee in accordance with RoP 78(2). As the letter was copied to the Chairman of the Select Committee, he replied to the C Y Leung Campaign Office in writing on 5 March 2012. He stressed in his reply that select committees appointed by LegCo had all along operated independently and conducted their inquiries strictly in accordance with RoP and the practice and procedure made by the select committees. The letter from the C Y Leung Campaign Office and the replies of the Secretary General of the LegCo Secretariat and the Chairman of the Select Committee are in **Appendix 1(a)**.

### **Areas of study and work plan**

1.8 Based on the terms of reference of the Select Committee as set out in the Resolution, the Select Committee decided, at its open meeting on 10 March 2012, to study the following major areas :

- (a) the conduct of the Competition. This includes the preparatory work in relation to the design of the Competition; criteria and decision-making process for the appointment of the Professional Advisor, Honorary Special Advisor and members of the Technical Panel and the Jury, and the respective roles and duties of these parties; compilation of the Competition Document issued at the launch of the Competition, including the rationale behind the General Conditions of the Competition, the parties responsible for the drafting and compilation of the

Competition Document, Competition rules and submission requirements, the method of assessment and scoring methods; as well as launching of the Competition, including how the Competition was launched, how entries were registered and proposals submitted, how information on the registration forms was verified, and the methods and process in ensuring anonymity of submissions until after the Jury had selected the winning entries;

- (b) mechanism and procedure for dealing with conflict of interests. This includes the decision-making process in formulating requirements and procedures to avoid conflict of interests; procedures and forms used for declaration of interest by registrants of the Competition, the Professional Advisor, the Technical Panel and the Jury, as well as by all other parties, including staff members in the Planning Department, Planning and Lands Bureau and other departments or organisations which took part in the organising of the Competition; method in verifying information on the completed declaration forms, parties responsible for verification, how conflict of interests was reported and dealt with; all cases which were reported to have conflict of interests in the Competition;

- (c) the adjudication process. This includes the process of assessment by the Technical Panel and the results of assessment; the process of assessment by the Jury including the consideration of the Report of the Technical Panel, the assessment criteria and process and the voting process, and the results of assessment; procedure and decision-making process leading to the disqualification of entries, including the Entry Concerned, and actions contemplated and/or undertaken in relation to the disqualification decisions; adjudication of the winning entries and the Entry Concerned; process in deciding on the final results of the Competition and the release of information in relation to the Competition, including the preparation and publication of the Report of the Jury; and
- (d) Mr LEUNG Chun-ying's association with the Entry Concerned. This includes the role of Mr LEUNG Chun-ying in the operation of DTZ Debenham Tie Leung Limited ("DTZ"), including the extent of involvement in the management and operation of DTZ in respect of the projects and prospective projects undertaken or to be undertaken by DTZ and the reporting mechanism; role and involvement of DTZ in respect of the Entry Concerned, including DTZ's relationship with Hamzah & Yeang, Davis Langdon & Seah Hong Kong Limited ("DLS") and LWK & Partners (HK) Ltd ("LWK"); and Mr LEUNG Chun-ying's knowledge of the role and

involvement of DTZ in the Competition before and during the adjudication of the entries.

1.9 The Select Committee also decided to conduct its study in three stages :

- (a) Stage I for undertaking preparatory work including drawing up the practice and procedure of the Select Committee, deciding on the major areas of study and information to be obtained from the relevant parties, identifying the witnesses to be summoned and determining the order of the witnesses to be summoned;
- (b) Stage II for conducting hearings to obtain evidence from witnesses and for deliberating on the evidence obtained; and
- (c) Stage III for holding internal deliberations for preparing and discussing the draft report of the Select Committee.

1.10 The Select Committee notes that in accordance with sections 6(3) and (4) of the Legislative Council Ordinance (Cap. 542), the Chief Executive specified in Government Notice No. 1529 published on 16 March 2012 in the Gazette that the Fourth LegCo stands prorogued from 18 July 2012, in order to enable the next LegCo general election to be held on 9 September 2012. Taking into account that the last Council meeting is scheduled for 11 July 2012 before prorogation, and that under

RoP 78(5) a select committee is dissolved at the end of a LegCo term, the Select Committee agreed to target to table its report under RoP 78(4) in the Council by late June 2012.

### **Practice and procedure**

1.11 The proceedings of the Select Committee are governed by the LCPPO and RoP. In addition, the Select Committee has made its own practice and procedure at its open meeting on 10 March 2012 which covers matters not expressly provided for in LCPPO and RoP. A copy of the Practice and Procedure of the Select Committee is in **Appendix 1(b)**.

1.12 In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and committees which carry out investigations, and has applied the following principles :

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;

- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's Terms of Reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

#### Meetings of the Select Committee

1.13 In accordance with RoP 79(2), the meetings of a select committee shall be held in public unless the chairman otherwise orders in accordance with a decision of the committee. The Select Committee decided that as a general rule, the taking of evidence should be conducted at open hearings. Nevertheless, witnesses were informed that if they wished their evidence to be taken at closed meetings, they should submit their reasons in writing to the Select Committee for a decision. None of the witnesses sought to appear at a closed meeting, and all the hearings were held in public.

1.14 The Select Committee also decided that witnesses should be summoned, instead of being invited, to attend the hearings of the Select Committee, and that they should be examined on oath. The witnesses who are lawfully ordered to attend the hearings of the Select Committee

to give evidence or to produce documents are entitled, in respect of such evidence or documents, to the same right or privilege as before a court of law by virtue of section 14(1) of LCPPO. Noting that a witness summons may only be served on persons in Hong Kong, the Select Committee decided that special arrangements be made for those persons who may assist the Select Committee in its study but are outside Hong Kong to appear before the Select Committee to give evidence. The Select Committee invited four persons who were then outside Hong Kong to assist in its study by either coming to Hong Kong, who would then be served with summonses under LCPPO in order to give the witnesses the protection of immunities and privileges under LCPPO, or video conferencing, to give evidence or provide information. These four persons were Dr Kenneth YEANG of Hamzah & Yeang, Lord ROTHSCHILD who was the Chairman of the Jury, Mr Peter ROGERS who was a member of the Jury and Mr Edmund HO Hin-kwan of DTZ. Dr YEANG and Lord ROTHSCHILD declined the invitations, while Mr ROGERS and Mr HO replied in writing that they had no recollection of the matter under study by the Select Committee. The replies of these four persons are in **Appendix 1(c)**.

1.15 In line with the practice of previous select committees, the Select Committee decided that its internal deliberations should be held at closed meetings. The Select Committee agreed that members should not disclose its internal deliberations or documents considered at these meetings, and that the Chairman and Deputy Chairman should be the only persons authorised to handle enquiries from the media concerning the work of the Select Committee.

1.16 The Select Committee held the first meeting on 10 March 2012 to undertake preparatory work for its study. This was followed by six public hearings between 17 March and 21 April 2012 during which evidence was taken from 17 witnesses attending the hearings. The number of hearing hours was 25. The Select Committee spent another nine hours to prepare for these hearings. The Select Committee also held 10 meetings comprising a total of 31 hours to discuss the evidence obtained and deliberate on the report and matters relating to its study. A schedule of the hearings and the names of the witnesses are in **Appendix 1(d)**.

#### Impartiality of the study

1.17 The Select Committee has accorded paramount importance to the principle of impartiality in the conduct of its study. The spirit of impartiality is reflected in the decision of the House Committee made at its meeting on 2 March 2012 that the chairman and deputy chairman nominated by the House Committee for the President of LegCo's appointment to the Select Committee should only be those members who had not nominated any candidates for the CE Election.

1.18 The Select Committee noted that the polling date for the CE Election was 25 March 2012, and was of the view that where a witness called to give evidence at a hearing was a candidate running for the office of the Chief Executive in the CE Election, the Chairman would take care to ensure that members of the Select Committee followed strictly the practice and procedure of the Select Committee. That is to say, members

only asked questions for the purpose of ascertaining facts relevant to, and within the scope of, the Select Committee's study, and did not make comments or statements during these hearings.

### Transparency of the study

1.19 Following the practice of previous select committees, members of the public may obtain copies of the sound recordings of public hearings of the Select Committee upon payment of a fee. In order to enhance the transparency of the Select Committee's proceedings and to assist members of the public in understanding the proceedings, they were provided with copies of the written statements of the witnesses who were appearing before the Select Committee. Their attention was, however, drawn to the fact that the statements were made available to them only for the purpose of assisting them in understanding the proceedings at the public hearings. They were also reminded that the use of the contents of the written statements for other purposes was not protected by the privileges provided under LCPPO, and they should obtain legal advice before doing so.

1.20 To further enhance the transparency of its work, the Select Committee decided that all unclassified documents obtained by the Select Committee, once produced by witnesses at open hearings, were uploaded onto the LegCo website for public inspection.

1.21 In order to keep the media updated on the work of the Select Committee, briefings for the media were conducted by the Chairman after each meeting/public hearing.

The relevant scope of the study

1.22 The Select Committee is mindful of its scope of study and the major areas of study as defined in the Resolution passed by the Council and agreed by members of the Select Committee on 10 March 2012. Where members proposed to obtain written information or evidence from witnesses or persons related to the Competition, the Select Committee considered whether the information requested to be obtained was relevant to its scope of study, whether the information could be or had been obtained during public hearings and whether the information could help its understanding of the matter under study.

1.23 In the course of the Select Committee's study, Dr Priscilla LEUNG proposed to obtain information on the details of the entry from a team led by Foster & Partners of the United Kingdom which subsequently became the first prize winner in the Competition, and to put forward written questions to Lord ROTHSCHILD, Chairman of the Jury, all other members of the Jury and, in particular, Mr Peter ROGERS, one of the overseas members of the Jury. According to Dr LEUNG, the purpose of seeking the requisite information was to examine how far the ineligibility provision governing the Competition also applied to entries submitted by other overseas participants and the association, if any, between Mr ROGERS and Foster & Partners. As the terms of reference

of the Select Committee was about Mr LEUNG Chun-ying's involvement in the Competition, some members considered that the examination of the association, if any, between Mr ROGERS and Foster & Partners would not be directly relevant to the study of the Select Committee. These members had suggested to Dr LEUNG that she might seek the requisite information from witnesses who appeared before the Select Committee. Should she consider that such witnesses could not provide the requisite information and the matter ought to be further followed up, she might propose the pursuit of the matter in a separate inquiry. Dr LEUNG's request to put forward written questions to Lord ROTHSCHILD and Mr ROGERS, who were not witnesses as mentioned in paragraph 1.14, was hence not proceeded with<sup>1</sup>.

1.24 During the hearings, Dr LEUNG had put forward questions to witnesses on the applicability of the eligibility requirements to entries submitted by overseas participants and whether arrangements had been put in place to check against the possible conflicts of interests between those entrants and members of the Jury. The evidence obtained has been incorporated in Chapter 2 of this Report.

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<sup>1</sup> Members voted on Dr Priscilla LEUNG's proposal to amend paragraph 1.23. Mr Abraham SHEK and Dr Priscilla LEUNG voted in favour of the proposal. Mr Andrew CHENG, Mr LEE Wing-tat, Ms Cyd HO, Dr LAM Tai-fai, Mr Paul TSE, Miss Tanya CHAN and Mr WONG Yuk-man voted against the proposal. Dr Philip WONG and Mr Paul CHAN abstained from voting. The proposal was negatived (please refer to paragraphs 8 to 10 of the Minutes of Proceedings of the meeting on 19 June 2012 in this Report).

### Disclosure of interests

1.25 In addition to RoP 83A and 84 governing the disclosure of pecuniary interest, the Select Committee decided that members who wished to declare non-pecuniary interest should write to the Chairman to declare such interest. The Chairman and nine members of the Select Committee have made such declarations. All these written declarations were uploaded onto the LegCo website for public inspection.

### Verbatim transcripts of hearings

1.26 The minutes of evidence, in the form of verbatim transcripts made from the sound recordings of the proceedings of the meetings at which witnesses were examined, form part of the Select Committee's report to the Council. In order that witnesses can have a fair and reasonable opportunity to consider whether their oral evidence is accurately transcribed, the Select Committee sent to all witnesses the parts of the draft verbatim transcripts of their respective oral evidence so that they could have the opportunity to propose corrections, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The Select Committee accepted corrections proposed so long as they did not materially alter the general sense of the evidence so recorded.

1.27 The Select Committee also agreed that where considered appropriate, copies of the transcripts of evidence taken in public might be provided to witnesses and prospective witnesses on request upon payment

of a fee, subject to the unpublished and/or uncorrected status of the transcripts being stated clearly, and also subject to the conditions that the witnesses or prospective witnesses shall not make public use of the transcripts, or quote directly from the transcripts, or use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons. This arrangement is based on the principles that :

- (a) the provision of verbatim transcripts to witnesses and prospective witnesses will enable them to keep track of the proceedings of the Select Committee and facilitate their response to questions raised by the Select Committee, which in turn will facilitate the conduct of the Select Committee's proceedings in an effective and efficient manner; and
- (b) it will enhance procedural fairness, especially to those whose interests or reputation may be affected by the Select Committee's proceedings.

1.28 Without prejudice to the authenticity of the evidence given, the Select Committee has followed the practice of using written Chinese instead of Punti dialect in the verbatim transcripts of its hearings in order to make the written record readable. On 30 April 2012, the solicitors acting for Mr LEUNG Chun-ying returned the draft verbatim transcripts of the proceedings of public hearings attended by Mr LEUNG Chun-ying to the Select Committee and informed that it would not be possible for them to render meaningful corrections if the verbatim transcripts are not

"word for word" record in respect of what had been said by Mr LEUNG Chun-ying at the hearings. The Select Committee considers that the proceedings of all public hearings have been uploaded onto the LegCo website and the draft verbatim transcripts in their current form would not limit Mr LEUNG Chun-ying in any manner in proposing corrections. Nevertheless, the Select Committee has taken into account Mr LEUNG Chun-ying's request that where his answers to questions raised at hearings are referred to in its report, word for word transcription is adopted as far as practicable. The correspondence between Mr LEUNG Chun-ying's solicitors and the Select Committee in this regard is in **Appendix 1(e)**.

1.29 The procedures for provision of transcripts of evidence are set out in Annex III to Appendix 1(b).

### Written Evidence

1.30 For the purpose of its study, the Select Committee has ordered witnesses to produce certain papers, records and documents in their possession. The Select Committee has decided that all unclassified documents obtained by the Select Committee are uploaded onto the LegCo website for public inspection. The findings and observations of the Select Committee are based on the written and oral evidence given by the witnesses. The Select Committee understands that as the incident occurred over 10 years ago and some of the documents were not complete, most witnesses, in giving evidence, had to rely on the records and documents in their possession, as well as their own memory and

perspectives. The Select Committee has taken into account this situation when considering evidence given by witnesses.

#### Classification of documents

1.31 Two witnesses and the Administration had requested the Select Committee to treat some of the documents they had provided as confidential for the reason that such documents contained commercially sensitive or personal information. The Select Committee considered the nature of such documents, the principle of public interest and the need for its operational efficiency in deciding whether their requests should be acceded to on a case-by-case basis. The Select Committee acceded to the request of one of the above two witnesses in respect of one document which contained commercial information. The Select Committee decided not to accede to the Administration's request because there was a legitimate public interest in disclosing the documents concerned which were relevant to the subject matter of its study, but agreed that information on the identity of the persons in the documents concerned should be obliterated before they were released to the public and uploaded onto the LegCo website.

#### Draft findings and observations

1.32 The Select Committee attaches great importance to ensuring that its procedure is fair and seen to be fair to parties whose interests or reputation may be affected by its proceedings. Where the Select Committee considered appropriate, relevant parts of the draft findings and

observations of its report were provided to the witnesses to give them an opportunity to comment. After the comments were received from the witnesses, the Select Committee held two meetings comprising a total of five hours to consider the comments carefully before finalising its report.

### **Invitation of public views**

1.33 Members of the public were invited to give views on the subject matter under study by the Select Committee. A general invitation for submissions was posted on the LegCo website on 22 March 2012. The Select Committee has received 14 submissions and uploaded these submissions onto the LegCo website. A list of the parties making the submissions is in **Appendix 1(f)**.

### **Report**

1.34 Under RoP 78(4), the Select Committee shall, as soon as it has completed consideration of the matter referred to it, report to the Council thereon and shall thereupon be dissolved. The Select Committee has completed consideration of the matter specified in the Resolution which appointed it and submits the Report to the Council.

1.35 The Report of the Select Committee consists of the main report, lists of written evidence and relevant documents, the minutes of proceedings, as well as the minutes of evidence in the form of verbatim

transcripts in the original language used at the public hearings. For environmental protection purposes, the minutes of evidence are available on CD-ROM only. This Report is also accessible on the LegCo website at [www.legco.gov.hk](http://www.legco.gov.hk).

1.36 This report comprises four Chapters. This Chapter is mainly an introduction to the background and the sequence of events leading to the appointment of the Select Committee as well as important matters relating to the work of the Select Committee. Chapter 2 gives an account of the process of the appointment of Mr LEUNG Chun-ying as a member of the Jury for the Competition, the declarations made by him, his participation in the adjudication of the entries and the making of the decision by the Jury to disqualify the Entry Concerned. Chapter 3 gives an account of the association of DTZ with the Entry Concerned and examines whether and how far Mr LEUNG Chun-ying was aware of DTZ's participation in the Competition. Chapter 4 sets out the conclusions of the Select Committee.